

- (D) the Financial Stability Oversight Council;
- (E) the Department of Justice; and
- (F) any other person that the Commission determines to be appropriate, including—
  - (i) foreign financial supervisors (including foreign futures authorities);
  - (ii) foreign central banks; and
  - (iii) foreign ministries.

(5) *Confidentiality and indemnification agreement*

Before the Commission may share information with any entity described in paragraph (4)—

(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 12 of this title relating to the information on swap transactions that is provided; and

(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 12 of this title.

(6) *Public information*

Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13) of this title.

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b), is Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2236, as amended. For definition of over-the-counter derivative instrument, see section 4421 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 5b of act Sept. 21, 1922, was renumbered section 5e, and is classified to section 7b of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

CONFLICTS OF INTEREST

Pub. L. 111-203, title VII, §725(d), July 21, 2010, 124 Stat. 1692, provided that: “The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.”

[For definitions of terms used in section 725(d) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

**§ 7a-2. Common provisions applicable to registered entities**

**(a) Acceptable business practices under core principles**

**(1) In general**

Consistent with the purposes of this chapter, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 7(d), 7a(d), and 7a-1(c)(2) of this title, and section 2(h)(7) of this title with respect to significant price discovery contracts, to describe what would constitute an acceptable business practice under such sections.

**(2) Effect of interpretation**

An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

**(b) Delegation of functions under core principles**

**(1) In general**

A contract market, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.

**(2) Responsibility**

A contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

**(3) Noncompliance**

If a contract market, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this chapter, the contract market, derivatives transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.

**(c) New contracts, new rules, and rule amendments**

**(1) In general**

Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

**(2) Prior approval**

**(A) In general**

A registered entity may request that the Commission grant prior approval to any new

contract or other instrument, new rule, or rule amendment.

**(B) Prior approval required**

Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) of this title (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

**(C) Deadline**

If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

**(3) Approval**

The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this chapter.

**(d) Violation of core principles**

**(1) In general**

If the Commission determines, on the basis of substantial evidence, that a registered entity is violating any applicable core principle specified in section 7(d), 7a(d), or 7a-1(c)(2) or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility,<sup>1</sup> the Commission shall—

(A) notify the registered entity in writing of the determination; and

(B) afford the registered entity an opportunity to make appropriate changes to bring the registered entity into compliance with the core principles.

**(2) Failure to make changes**

If, not later than 30 days after receiving a notification under paragraph (1), a registered entity fails to make changes that, in the opinion of the Commission, are necessary to comply with the core principles, the Commission may take further action in accordance with this chapter.

**(e) Reservation of emergency authority**

Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 12a(9) of this title.

**(f) Rules to avoid duplicative regulation of dual registrants**

Consistent with this chapter, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or

conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof) with respect to the application of—

(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 6d(c) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o-3(a) of title 15 and national securities exchanges registered pursuant to section 78f(g) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, § 5c, as added and amended Pub. L. 106-554, § 1(a)(5) [title I, § 113, title II, § 251(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-399, 2763A-444; Pub. L. 110-234, title XIII, §§ 13105(e), (f), 13203(i)-(k), May 22, 2008, 122 Stat. 1434, 1440, 1441; Pub. L. 110-246, § 4(a), title XIII, §§ 13105(e), (f), 13203(i)-(k), June 18, 2008, 122 Stat. 1664, 2196, 2202, 2203; Pub. L. 111-203, title VII, §§ 717(d), 721(e)(7), 745, 749(c), July 21, 2010, 124 Stat. 1652, 1671, 1735, 1747.)

AMENDMENT OF SECTION

*Pub. L. 111-203, title VII, §§ 717(d), 721(e)(7), 745, 749(c), 754, July 21, 2010, 124 Stat. 1652, 1671, 1735, 1747, 1754, provided that, effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§ 711-754) of title VII of Pub. L. 111-203 requires a rule-making, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, this section is amended as follows:*

*(1) in subsection (a)—*

*(A) in paragraph (1), by striking “, 7a(d),”; and by striking “and section (2)(h)(7) of this title with respect to significant price discovery contracts,”; and*

*(B) by striking paragraph (2) and inserting the following:*

*“(2) Effect of interpretation*

*“An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).”;*

*(2) in subsection (c)—*

*(A) in paragraph (1)—*

*(i) by striking “Subject to paragraph (2)” and inserting the following:*

*“(A) Election*

*“Subject to paragraph (2)”;* and

*(ii) by adding at the end the following new subparagraph:*

*“(B) Certification*

*“The certification of a product pursuant to this paragraph shall be stayed pending a determination by the Commission upon the request of the Securities and Exchange Commission or its Chairman that the Commission issue a determination as to whether the product that is the subject of such certification is a contract of sale of a commodity for future delivery, an option on*

<sup>1</sup> So in original.

such a contract, or an option on a commodity pursuant to section 8306 of title 15.”; and

(B) in paragraph (2)(B), by striking “section 1a(4)” and inserting “section 1a(9)”;

(3) by striking subsection (c) and inserting the following:

“(c) New contracts, new rules, and rule amendments

“(1) In general

“A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

“(2) Rule review

“The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this chapter (including regulations under this chapter).

“(3) Stay of certification for rules

“(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

“(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

“(i) withdraws the stay prior to that time; or

“(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this chapter (including regulations under this chapter).

“(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

“(4) Prior approval

“(A) In general

“A registered entity may request that the Commission grant prior approval to any new

contract or other instrument, new rule, or rule amendment.

“(B) Prior approval required

“Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

“(C) Deadline

“If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

“(5) Approval

“(A) Rules

“The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this chapter (including regulations).

“(B) Contracts and instruments

“The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this chapter (including regulations).

“(C) Special rule for review and approval of event contracts and swaps contracts

“(i) Event contracts

“In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) of this title), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

“(I) activity that is unlawful under any Federal or State law;

“(II) terrorism;

“(III) assassination;

“(IV) war;

“(V) gaming; or

“(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

“(ii) Prohibition

“No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

## “(iii) Swaps contracts

## “(I) In general

“In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

## “(II) Requirements

“Any such criteria, conditions, or rules shall consider—

“(aa) the financial integrity of the derivatives clearing organization; and

“(bb) any other factors which the Commission determines may be appropriate.

## “(iv) Deadline

“The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.”;

(4) by striking subsection (d); and

(5) in subsection (f)(1), by striking “section 6d(c) of this title” and inserting “section 6d(e) of this title”.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

## AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-246, §13203(i), which directed amendment of par. (1) by inserting “, and section 2(h)(7) of this title with respect to significant price discovery contracts,” after “, and 7a-1(d)(2) of this title”, was executed by making the insertion after “, and 7a-1(c)(2) of this title” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, §13105(e). See below.

Pub. L. 110-246, §13105(e), substituted “7a-1(c)(2)” for “7a-1(d)(2)”.

Subsec. (b)(1). Pub. L. 110-246, §13203(j)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.”

Subsec. (b)(2), (3). Pub. L. 110-246, §13203(j)(2), (3), substituted “contract market, derivatives transaction execution facility, or electronic trading facility” for “contract market or derivatives transaction execution facility” wherever appearing.

Subsec. (d)(1). Pub. L. 110-246, §13203(k), which directed amendment of par. (1) by inserting “or 2(h)(7)(C) of this title with respect to a significant price discovery contract traded or executed on an electronic trading facility,” after “7a-1(d)(2)”, was executed by making the insertion after “7a-1(c)(2)” in introductory provisions to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110-246, §13105(e). See below.

Pub. L. 110-246, §13105(e), substituted “7a-1(c)(2)” for “7a-1(d)(2)” in introductory provisions.

Subsec. (f)(1). Pub. L. 110-246, §13105(f), substituted “6d(c)” for “6d(3)”.

2000—Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §251(h)], added subsec. (f).

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(i)–(k) of Pub. L. 110-246 effective June 18, 2008, see section 13204(a) of Pub. L. 110-246, set out as a note under section 2 of this title.

## § 7a-3. Exempt boards of trade

## (a) Election to register with the Commission

A board of trade that meets the requirements of subsection (b) of this section may operate as an exempt board of trade on receipt from the board of trade of a notice, provided in such manner as the Commission may by rule or regulation prescribe, that the board of trade elects to operate as an exempt board of trade. Except as otherwise provided in this section, no provision of this chapter (other than subparagraphs (C) and (D) of sections 2(a)(1) and 16(e)(2)(B) of this title) shall apply with respect to a contract of sale of a commodity for future delivery (or option on such a contract) traded on or through the facilities of an exempt board of trade.

## (b) Criteria for exemption

To qualify for an exemption under subsection (a) of this section, a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts or on a commodity)—

(1) for which the underlying commodity has—

(A) a nearly inexhaustible deliverable supply;

(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

(C) no cash market;

(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

(3) that are not contracts of sale (or options on such a contract or on a commodity) for future delivery of any security, including any group or index of securities or any interest in, or based on the value of, any security or any group or index of securities.

## (c) Antimanipulation requirements

A party to a contract of sale of a commodity for future delivery (or option on such a contract or on a commodity) that is traded on an exempt board of trade shall be subject to sections 6b, 6c(b), 6o, 9, 15, and 13(a)(2) of this title, and the